SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1966

No. 1015

IN THE INTEREST OF T. W. P.

Petitioner.

PETITION FOR WRIT OF CERTIORARI
to
THE SUPREME COURT OF FLORIDA
and
THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INDEX

	Page
Citations to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Writ	4
I. The Denial of Due Process	4
II. The Denial of Equal Protection	7
III. The Relevance of *In Re Gault*	8
IV. The Issue of Mootness	8
V. Summation	14
Conclusion	15
Appendix	App. 1

TABLE OF CASES

	Page
Application of Johnson, 178 F. Supp. 155 (U.S.D.C., N.J. 1957)	6
Dooling v. Overholser, 243 F.2d 825 (C.A.D.C., 1957)	6
Fiswick v. U. S., 329 U.S. 211, 91 L.Ed. 196, 67 S.Ct. 224 (1946)	13
Gideon v. Wainright, 372 U.S. 335; 9 L.Ed. 2d 799; 83 S.Ct. 792 (1963)	4
Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956)	8
In Re Carlo, 35 Law Week 2322 (N.J., 1966)	7
In Re Contreras, 241 P. 2d 631 (Cal., 1952)	7
In Re Gault, No. 116, October term, 1966	8
In Re Mantell, 62 N.W. 2d 308 (Neb., 1954)	6
In Re Poff, 135 F.Supp. 224 (U.S.D.C., D.C. 1955)	5
In Re Poulin, 129 A.2d 672 (N.H., 1957)	5
Jones v. Cunningham, 371 U.S. 236, 9 L.Ed. 2d 285, 83 S.Ct. 373 (1963)	13
Kent v. United States, 383 U.S. 541, 16 L.Ed. 2d 84 (1966)	7

TABLE OF CASES (cont.)

	Page
Lane v. Brown, 372 U.S. 477, 9 L.Ed. 2d 892, 83 S.Ct. 768 (1963)	8
Liner v. Jafco, 375 U.S. 301, 11 L.Ed. 2d 347, 84 S.Ct. 391 (1964)	12
Long v. District Court, No. 77, Oct. Term 1966, 35 Law Week 4046	8
People v. James, 211 N.Y.S. 2d 170 (N.Y. 1961)	5
Pollard v. United States, 352 U.S. 354, 1 L.Ed. 2d 393, 77 S.Ct. 481 (1957)	13
Shioutaken v. District of Columbia, 236 F.2d 666 (D.C. App. 1956)	5
Singleton v. Board of Commissioners of State Institutions, 356 F.2d 771 (5th C.A., 1966)	9
Smith v. Bennett, 365 U.S. 708, 6 L.Ed. 2d 39, 81 S.Ct. 895 (1963)	6
State v. Dennis, 185 So.2d 12 (Fla., 1966)	10
State v. Franklin, 12 So.2d 211 (La., 1943)	6
State v. Naylor, 207 A. 2d 1 (Del., 1965)	5
Trimble v. Stone, 187 F.Supp. 483, (U.S.D.C., D.C. 1960)	5

TABLE OF CASES (cont.)

	Page
United States v. Dickerson, 168 F.Supp. 899 (U.S.D.C., D.C. 1958)	7
United States v. Morgan, 346 U.S. 502, 98 L.Ed. 248, 74 S.Ct. 247 (1954)	13
United States v. Morales, 233 F. Supp. 160 (U.S.D.C., Mont. 1964)	7
Walling v. Reuter, 321 U.S. 671, 88 L.Ed. 1001, 64 S.Ct. 826 (1944)	14

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PETITION FOR WRIT OF CERTIORARI to THE SUPREME COURT OF FLORIDA and THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgments of the Supreme Court of Florida and the District Court of Appeal of Florida, Third District, entered in the above-styled cause on March 29, 1966 and December 7, 1966, respectively.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal is reported in 184 So.2d 507. The opinion of the Supreme Court of Florida is reported in 192 So.2d 482.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3), in that a right is claimed under the 14th Amendment to the Constitution of the United States.

Following the rendition of the decision of the District Court of Appeal on March 29, 1966, Petitioner, pursuant to Article V, Sec. 4(2) of the Florida Constitution, (3 Fla.Stats. 3801, 1965 Ed.) filed an appeal with the Supreme Court of Florida, which Court, in its opinion dated December 7, 1966, dismissed the appeal on the ground of mootness.

QUESTIONS PRESENTED

1. Where an indigent juvenile is charged before a juvenile court with the commission of felonious acts, adjudicated to be a delinquent, and sentenced to a state reform school for the balance of his minority, and where the court at the hearing failed to advise the indigent juvenile of his right to counsel or to appoint counsel on his behalf, was the juvenile thereby deprived of due process and equal protection under the 14th Amendment?

2. Where, pending his appeal before the Florida Supreme Court, the juvenile is released from reform school, does this Federal question thereupon become moot?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Involved herein are (1) the due process and equal protection clauses of the 14th Amendment; and (2) Flor-

ida Statutes, Chapter 39, which provides for the jurisdiction, powers and organization of the Florida juvenile courts, and relevant sections of which are set forth in the Appendix hereto. 1 Fla. Stats. 162 (1965 Ed.)

STATEMENT OF THE CASE

By Order dated July 21, 1965, the Juvenile and Domestic Relations Court in and for Dade County, Florida, held that Petitioner, being then 16 years old, broke and entered the linen room of a hotel, taking property and causing damage; took an automobile and drove it into another county without the owner's consent or knowledge; and took part in a strong arm robbery; and the Court ordered Petitioner committed to the Florida School for Boys for the period of his minority. At the hearing on these charges the trial court failed to advise Petitioner, an indigent, of his right to counsel, and failed to appoint counsel in his behalf. Although Petitioner did not request counsel at the time of the hearing, shortly thereafter counsel was obtained, without charge, through the American Civil Liberties Union, and an appeal was promptly taken to the District Court of Appeal, Third District of Florida. Thereafter, the District Court affirmed the judgment of the Juvenile Court, by decision rendered on March 29, 1966 (App. 1).

The federal question was first raised in Petitioner's Motion for Rehearing and in his application for bail before the Juvenile Court (Tr. D 8, 9-12). (For convenience, the transcript of proceedings before the District Court are designated herein as "Tr. D__", and those before the Supreme Court of Florida as "Tr. S__") The federal question was preserved in Petitioner's Assignments of Error

both in the District Court and in the Supreme Court of Florida. (Tr. D 13-15 and 23).

REASONS FOR GRANTING THE WRIT

I. The Denial of Due Process.

The District Court held that:

> " . . . there can be no question that a proceeding before the juvenile court is not a criminal proceeding, thus the constitutional and statutory rights given to persons charged with crime are not applicable to such proceedings. Nor has the legislature provided in the Act that a juvenile must be advised that he has a right to engage counsel or to have counsel named in his behalf, and our view of the act is that the legislature did not intend that a juvenile have this right in a juvenile court proceeding.
>
> "We therefore conclude that the proceedings in respect to appellant have been in compliance with statutory requirements and that the constitutional requirements guaranteed one accused of crime are not applicable." 184 So.2d 507, 510.

Petitioner submits that this ruling is in conflict with *Gideon* v. *Wainright*, 372 U.S. 335; 9 L.Ed. 2d 799; 83 S.Ct. 792 (1963), where the accused, an indigent, was sentenced to serve five years in the state prison for commission of a felony. Here Petitioner, charged with three acts which, had they been committed by an adult, would all have constituted felonies, was likewise sentenced to

serve five years in the Florida School for Boys, and subjected to deprivation of his liberty for a term equaling that imposed in *Gideon*. Accordingly, Petitioner submits that there is no legally significant difference in the issues presented here and in *Gideon*.

The decision of the District Court is also in conflict with rulings in other jurisdictions which have held that juvenile courts must comply with the requirements of due process. Thus, in *State* v. *Naylor*, 207 A. 2d 1 (Del., 1965) the court held that at a hearing on the question of transfer of jurisdiction from the juvenile court to the criminal court, "unless a juvenile has counsel at such a hearing he has been denied due process of law." 207 A. 2d 1, 11. Cf. *People* v. *James*, 211 N.Y.S. 2d 170 (N.Y., 1961); *In Re Poff*, 135 F. Supp. 224 (U.S.D.C., D.C. 1955); *In Re Poulin*, 129 A.2d 672 (N.H., 1957); *Shioutaken* v. *District of Columbia*, 236 F.2d 666 (D.C. App., 1956).

As Justice Holtzoff stated in *Trimble* v. *Stone*, 187 F.Supp. 483, 485 (U.S.D.C., D.C., 1960):

> "The fact that the proceedings are to be classified as civil instead of criminal, does not, however, necessarily lead to the conclusion that constitutional safeguards do not apply. . . . These proceedings have many ramifications which cannot be disposed of by denominating the proceedings as civil. . . . Basic human rights do not depend on nomenclature. . . .
>
> "Manifestly the Bill of Rights applies to every individual within the territorial jurisdiction of

the United States, irrespective of age. The Constitution contains no age limits."

Indeed, even in strictly civil proceedings where a person's liberty is at stake, as in commitment proceedings for the allegedly insane, the guarantees of due process obtain, e.g., *Dooling v. Overholser*, 243 F.2d 825 (C.A.D.C., 1957), where the court held that the alleged incompetent was entitled to appointment of representation by either an attorney or a guardian ad litem. And compare *Smith* v. *Bennett*, 365 U.S. 708, 6 L. Ed. 2d 39, 81 S.Ct. 895 (1961), where the Court, in cases involving the rights of indigent prisoners in habeas corpus proceedings, stated that: "The availability of a procedure to regain liberty lost through criminal process cannot be made contingent upon a choice of labels." 6 L.Ed. 2d 39, 42.

While the authorities are admittedly in conflict, a number of jurisdictions have expressly afforded due process guarantees to juveniles, e.g.:

(a) Right to notice of specific charges: *Application of Johnson*, 178 F. Supp. 155 (U.S. D.C., N.J. 1957)

(b) Right to bail: *Trimble* v. *Stone, supra; State* v. *Franklin*, 12 So.2d 211 (La., 1943)

(c) Right to cross-examine adverse witnesses: *People* v. *James, supra*, and *In Re Mantell*, 62 N.W. 2d 308 (Neb., 1954)

(d) Protection against double jeopardy:

United States v. *Dickerson*, 168 F. Supp. 899 (U.S.D.C., D.C., 1958)

(e) Protection against adjudication of delinquency founded upon incompetent hearsay evidence: *In Re Contreras*, 241 P. 2d 631 (Cal., 1952)

(f) Admissibility of juvenile's confession treated by the same standards of due process as obtain in traditional criminal proceedings: *United States v. Morales*, 233 F. Supp. 160 (U.S.D.C., Mont., 1964); *In Re Carlo*, 35 Law Week 2322 (N.J., 1966)

And this court only recently observed in *Kent* v. *United States*, 383 U.S. 541, 16 L.Ed. 2d 84, 98 (1966), that a hearing in juvenile court "must measure up to the essentials of due process and fair treatment."

II. The Denial of Equal Protection.

The common concept of the juvenile court as *parens patriae*, reviewed at length in *Kent*, *supra*, and the collateral concept that the proceedings therein are "non-adversary" in nature, are eroded by the very structure of the Florida Juvenile Court Act. *If the juvenile or his parents can afford counsel, then counsel may appear*, Fla. Stat., Sec. 39.09(1) App. 13, and thus turn the proceeding into a truly adversary contest, with responsive pleadings (Sec. 39.07) App. 13, compulsory process (Sec. 39.06(4) (App. 11), and application of the rules of evidence used in equity (Sec. 39.09(2)). (App. 13). The net effect of the statute and the decisions below is that only the rich man's son is

entitled to due process; the poor man's son is left to the mercies of parens patriae: The result, therefore, is an egregious denial of equal protection of the laws. As the Court said in *Griffin* v. *Illinois*, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956):

> "In criminal trials a state can no more discriminate on account of poverty than on account of religion, race or color. . . . There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." 100 L.Ed. 891, 898-899.

Accord: Smith v. *Bennett, supra; Lane* v. *Brown*, 372 U.S. 477, 9 L.Ed. 2d 892, 83 S.Ct. 768 (1963); and *Long* v. *District Court*, No. 77, Oct. Term 1966, 35 Law Week, 4046.

III. The Relevance of In Re Gault.

Petitioner notes that many of the substantive constitutional considerations involved herein have already been briefed at length and argued to the Court in *In Re Gault*, No. 116, October term, 1966. Notwithstanding the gamut of issues raised by *Gault*, it does not reach the "Gideon" issue posed herein, namely, the constitutional right of an indigent juvenile, charged with felonious offenses, to appointed counsel.

IV. The Issue of Mootness.

The Supreme Court of Florida held that:

> "no useful purpose would be served to adjudicate the merits of the appeal since a hearing de novo

> in the juvenile court, if granted, would not afford Appellant any greater relief that he enjoys under his release"

and that:

> "the juvenile proceedings herein are not criminal proceedings and no stigma attached to the Appellant growing out of such proceedings which would justify reaching back of the release and vitiating the adjudication in the juvenile court." (Tr. S 27; App. 7)

Petitioner submits that the case is not moot, that serious collateral consequences flow from his adjudication of delinquency, and that serious penalties and disabilities result therefrom.

First, Florida Statutes, Section 39.02(5) provides that:

> "When jurisdiction of any child shall have been obtained, the court shall retain jurisdiction, unless relinquished by order, until the child reaches twenty-one years of age. . . ."

No such order has been issued here, and therefore Petitioner remains subject to the continuing jurisdiction of the juvenile court. Cf. *Singleton* v. *Board of Commissioners of State Institutions*, 356 F. 2d 771, 774 (5th C.A., 1966). Moreover, Florida Statutes, Sec. 955.23 provides, that:

> "Such child shall, during the term for which he was originally sentenced to the Florida industrial

> school for boys, be also subject to the care and control of the board of commissioners of state institutions, and on their being satisfied at any time that the welfare of the child would be promoted by his return to the school, *they may order his return* and may enforce such order by application to the judge of any court having original criminal jurisdiction, or judge of the police or municipal court for a warrant for such purpose, which may be served by any officer authorized to serve criminal process." (Emphasis supplied)

Cf. *Singleton* v. *Board, supra.* Further, having once been adjudicated a delinquent, Petitioner may subsequently be arrested and detained indefinitely, without a hearing, and without any right whatsoever to habeas corpus, under the ruling of *State* v. *Dennis,* 185 So.2d 12 (Fla., 1966). There the court had before it Florida Statutes, Sec. 39.03(7), which provides that:

> "No child taken into custody *who has not been adjudicated to be a dependent or delinquent child* shall be detained in custody longer than two days, excluding Sundays and legal holidays, unless a special order so directing is made by the judge, finding that the release of the child would be inimical to the welfare of the child or of the public, stating the reasons for such finding. The reasons for such finding shall be reviewable by appeal or in habeas corpus proceedings." (Emphasis supplied)

Dennis had been adjudicated a delinquent on prior occasions and the court held that:

> "under the obvious wording of the statute, the juvenile judge was not required to have a hearing within two days to determine whether it would be inimical to the best interests of the community to release the minor"

and stated that:

> "once a minor is apprehended, who has previously been declared a delinquent [notwithstanding any subsequent discharge from probation or punishment], the juvenile court *may detain him without the hearing provided for* in Sec. 39.03 (7)" 185 So.2d 12, 13. (Emphasis supplied)

The court thereupon not only discharged the writ of habeas corpus, but further stated that in any hearing which the child might subsequently be afforded, there would be no right to bail, counsel, confrontation of witnesses, or cross-examination. 185 So.2d 12, 14.

Second, counsel for Petitioner have been advised by officers of the Dade County juvenile court that adjudications of juvenile delinquency by that court are made available to the armed forces, the Federal Bureau of Investigation, local police departments, and local criminal courts for pre-sentence investigation. Appended hereto is a letter (App. 17) from the Chief Probation Officer of the Criminal Court of Record of Dade County, dated December 27, 1966, advising Alfred Feinberg, Esq., of counsel to the undersigned attorneys for Petitioner, of this very practice, and as noted in the letter, the juvenile court judge is given authority to release such information pursuant to Florida Statutes, Sec. 39.12(3). (App. 15)

Third, one can neither minimize nor deny the stigma generated by an adjudication of juvenile delinquency, for in future, when Petitioner applies for employment or further educational opportunities, the inevitable inquiries will be made and he will be forever cursed by his record of imprisonment in reform school and by a judicial finding, rendered without due process of law, that he committed three serious felonious offenses. Unless this Court grants relief, he will be branded for life. See Polow, J.: "The Juvenile Court: Effective Justice or Benevolent Despotism", 53 ABA Journal 31, 32 (January, 1967).

Fourth, if this case be moot, then all efforts in future at obtaining a ruling on the core issue of this case will be frustrated. As the Fifth Circuit noted in *Singleton*, *supra*, where plaintiff sought to desegregate the Florida State School for Boys:

> "The plaintiffs point out the practical difficulty of ever getting a decision on the merits if present incarceration is a prerequisite, since at none of the Florida schools is the average sojourn of an inmate as long as the one year (and more) that often elapses between the filing of a complaint and the issuance of an order in the average desegregation suit." 356 F.2d 771, 774, (Fn. 4).

This Court, of course, is not bound by a state court ruling of mootness on a substantial question of federal law. *Liner* v. *Jafco*, 375 U.S. 301, 11 L.Ed. 2d 347, 84 S.Ct. 391 (1964). And paraphrasing *Liner*, the federal issues here remain of operative importance to the parties, and the decisions of the Florida courts, if left undisturbed,

would frustrate the federal policy dominated by the sweep of the Fourteenth Amendment.

Accordingly, this Court has repeatedly held that release from incarceration does not *ipso facto* generate mootness. In *Fiswick v. U. S.*, 329 U.S. 211, 91 L.Ed. 196, 67 S.Ct. 224 (1946) the Court found that "further penalties or disabilities" could be imposed upon the petitioner as a result of a judgment which had been satisfied, e.g., deportation, difficulty or impossibility of obtaining naturalization, and loss of civil rights. In *United States* v. *Morstates*, 352 U.S. 354, 1 L.Ed. 2d 393, 77 S.Ct. 481 (1957) Court concluded that: "Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected." 98 L.Ed. 247, 257. Again in *Pollard* v. *United States*, 253 U.S. 354, 1 L.Ed. 2d 393, 77 S.Ct. 481 (1957) the Court disposed of the issue of mootness on the basis of *Morgan* and *Fiswick*, *supra*, and stated that "those cases recognize that convictions may entail collateral legal disadvantages in the future." 1 L.Ed. 2d 393, 397. And in *Jones* v. *Cunningham*, 371 U.S. 236, 9 L.Ed. 2d 285, 83 S.Ct. 373 (1963), where petitioner was subject to the continuing jurisdiction of the Virginia Parole Board, the Court noted that:

> "he must live in constant fear that a single deviation, however slight, might be enough to result in his being returned to prison to serve out the very sentence he claims was imposed upon him in violation of the United States Constitution. He can be rearrested at any time the Board or parole officer believes he has violated a term or condition of his parole, and he might be thrown back

in jail to finish serving the allegedly invalid sentence with few, if any, of the procedural safeguards that normally must be and are provided to those charged with crime. It is not relevant that conditions and restrictions such as these may be desirable and important parts of the rehabilitative process; what matters is that they significantly restrain petitioner's liberty to do those things which in this country free men are entitled to do." 9 L.Ed. 2d 285, 290-291.

Finally, as the Court stated in *Walling* v. *Reuter*, 321 U.S. 671, 88 L.Ed. 1001, 64 S.Ct. 826 (1944): "the principles [involving mootness] may be applied in fuller measure in furtherance of the public interest, which here the petitioner represents, than if only private interests were involved." 88 L.Ed. 1001, 1005.

V. Summation.

Petitioner submits that the issue at bar is as vital to the administration of justice in juvenile courts as *Gideon* has been for our criminal courts. The adjudication of juvenile delinquency, whether it be characterized as civil, criminal, or otherwise, in practical effect results in a deprivation of the child's liberty, confinement in a penal institution, severe psychological and psycho-sexual consequences, separation from parents, friends and all normal societal and cultural contacts, and a stigma which, like the mark of Cain, will be borne by him for the rest of his life. Petitioner submits that the cause is not moot and that in view of (1) this Court's pronouncement in *Gideon*, (2) the conflict of decisions among the various jurisdictions, and (3) the importance of the issue to the

administration of justice in juvenile courts throughout the country, this cause provides the essential predicate for the assumption of certiorari jurisdiction.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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By _____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition for a writ of certiorari has, pursuant to Rule 33 (1) of the Revised Rules of the Supreme Court of the United States, been served by mail upon the Honorable Earl Faircloth, Attorney General of the State of Florida, Tallahassee, Florida, by air mail this ____ day of _____, 1967.

_____
Alfred I. Hopkins

APPENDIX

In The

DISTRICT COURT OF APPEAL OF FLORIDA

Third District

January Term, A.D. 1966

Case No. 65-678

IN THE INTEREST OF:

T. W. P.

Opinion filed March 29, 1966.

HENDRY, Chief Judge.

After a hearing on a petition before the Juvenile and Domestic Relations Court of Dade County, the juvenile court judge by order of May 17, 1965, found that the appellant, a child born July 2, 1949, was a delinquent within the meaning of Chapter 39, Fla.Stat., F.S.A., in that the child remained away from home from April 11, 1965 until May 6, 1965 without the consent and knowledge of his parents. It was ordered that the child be released to the custody of the child's parents and that he be placed under the supervision of an officer of the court for a probationary period until further order of the court. Upon a petition for rehearing, the juvenile court judge by order dated July 21, 1965, found that the child had violated the terms of probation by leaving home without the consent of his parents and that he had been implicated in a breaking and entering, a strong arm robbery and an automobile theft. It was ordered that the child be committed to the Florida School for Boys for the period of his minority unless he is sooner legally discharged therefrom.

The appellant's sole contention on this appeal is that the failure of the juvenile and domestic relations court to advise him, an indigent, of his right to counsel and to appoint counsel in his behalf was a violation of the sixth and fourteenth amendments of the Federal Constitution.[1] In support of this contention, the appellant relies on decisions from the District of Columbia and California.

In Shioutakon v. District of Columbia, 236 F.2d 666, (D.C.Cir.1956) the United States Court of Appeals, District of Columbia Circuit, held on page 670 that their "concern for the fair administration of justice impells us to hold that, in this and in similar cases in the future, the juvenile [in a juvenile court] must be advised that he has a right to engage counsel or to have counsel named on his behalf." In footnote 18 on page 669 of the same opinion the court indicated that they did not reach considerations of due process requirements since the holding rested on their view of the applicable statute. Chief Judge Prettyman speaking for the same court in Pee v. United States, 274 F.2d 556, (D.C.Cir.1959), reviewed the treatment provided by our society for alleged offenders against its laws and stated on page 558 that, "in the event a child commits an offense against the law, the state assumes a position as *parens patriae* and cares for the child. Such a one is not accused of a crime, not tried for a crime, not convicted of a crime, not deemed to be a criminal, not punished as a criminal, and no public record is made of his alleged offense. In effect, he is exempt from the criminal law." Judge Prettyman determined that juvenile court proceedings are not criminal cases and found that this proposition is supported by decisions of the highest courts

[1]Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799.

in forty-two states, and by statutes in the other eight (citing Florida-Ex parte Kitts, 109 Fla. 202, 147 So. 573, 575 [1933]). From this he concluded on page 559 that, "the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." Then in Kent v. United States, 343 F.2d 247, 256 (D.C.Cir.1964), it was indicated that, " 'due process' and 'fair treatment' in this context mean that the juvenile shall be dealt with in a reasonable and decent manner which gives due regard to his claims upon society as well as to the latter's claims upon him." It is interesting to note that the Municipal Court of Appeals for the District of Columbia in opinions filed after the Shioutakon case, supra, but considering hearings which occurred prior to that decision concluded that its previous holding that in a juvenile delinquency proceeding failure to advise the juvenile of his right to counsel did not constitute a denial of due process was sound and adhered to it.[2]

The Second District Court of Appeal of California in the case of In re Contreras, 109 Cal.App.2d 787, 241 P.2d 631, 633 (1952) said, "Surely, a minor charged in the juvenile court with acts denounced by law as a felony does not have lesser constitutional rights or guaranties than are afforded an adult under similar circumstances in the Superior Court." The same court in a later opinion[3] concluded that a juvenile court has no duty to advise minors of their right to be represented by counsel since that duty

[2]Swann v. District of Columbia, D.C. Mun.App. 1959, 152 A.2d 200; In re Schaeffer, D.C.Mun.App. 1956, 126 A.2d 870.

[3]People v. Fifield, 136 Cal.App.2d 741, 289 P.2d 303 (1955).

applies only to prosecutions for crime. It was stated that there was nothing in In re Contreras, supra, contrary to this conclusion. The California Supreme Court then held that:

> "The fact that a minor is not represented by counsel need not be a denial of due process in the juvenile court . . . It is only when by such lack of representation of the minor undue advantage is taken of him or he is otherwise accorded unfair treatment resulting in a deprivation of his rights that it can be said he has been denied due process of law."[4]

The Governor's Special Study Commission on Juvenile Justice, pt. II, p. 11 (1960), concluded from these decisions, "that although a minor may engage counsel to represent him in the juvenile court and the court must hear counsel, the court need not inform either the minor or his parents that counsel may be obtained nor is the court responsible for seeing that counsel is provided indigent parties who desire such representation."[5]

Justice Thornal, speaking for our Supreme Court in Noeling v. State, Fla.1956, 87 So.2d 593 said at page 596:

> "It is perfectly obvious from an examination of the language of the entire Act [Juvenile Court

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[4]People v. Dotson, 46 Cal.2d 891, 895, 299 P.2d 875, 877.

[5]McKesson, Right To Counsel In Juvenile Proceedings, 45 Minn. L.Rev. 843, 849 (1961); on page 850, Mr. Kesson remarks that the Governor's Commission recommended legislation requiring juvenile court judges to notify minors and their parents of the right of representation by counsel, but that the recommendation was deleted before the legislature adopted the commission's other recommendations.

> Act, Chapt. 39, Fla.Stat., F.S.A.] as well as the consideration of its legislative history and its historical background that it was the purpose and intent of the Legislature in enacting the Act under consideration to provide a forum which could consider the problems of dependent children in an informal fashion without the necessity of applying the strictness and technicalities that often accompany routine legislation."

Although we are cognizant of the fact that the legislature by § 1, Chapter 57-257, Laws of Florida 1957, deleted the words, "in an informal manner" from that portion of the Juvenile Court Act concerning the conduct of a hearing,[6] we are of the opinion that Justice Thornal's statement above, remains, in substance, applicable to juvenile court proceedings concerning both dependent and delinquent children. From a review of the procedure provided by our legislature in the Act there can be no question that a proceeding before the juvenile court is not a criminal procedeing, thus the constitutional and statutory

[6] § 39.09(2), Fla.Stat., F.S.A. which now reads:

"Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases in the circuit courts, and adjourning the hearings from time to time as necessary. All such hearings, except as hereinafter provided, shall be open to the public and no person shall be excluded therefrom except on special order of the judge, who, in his discretion may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. In any event, all hearings involving unwed mothers, custody or placement of illegitimate children shall remain confidential and closed to the public as heretofore. Hearings in such cases involving more than one child may be held simultaneously where the several children involved are related to each other or were involved in the same transactions. The child and the parents or legal custodians of the child may be examined separately and apart from each other. This subsection shall not be applicable to hearings before the judge as committing magistrate."

rights given to persons charged with crime are not applicable to such proceedings. Nor has the legislature provided in the Act that a juvenile must be advised that he has a right to engage counsel or to have counsel named on his behalf, and our view of the act is that the legislature did not intend that a juvenile have this right in a juvenile court proceeding.

We therefore conclude that the proceedings in respect to appellant have been in compliance with statutory requirements and that the constitutional requirements guarantied one accused of crime are not applicable. The order appeal will stand affirmed.

Affirmed.

In The

SUPREME COURT OF FLORIDA

July Term, A. D. 1966

Case No. 35,310

IN THE INTEREST OF:

T. W. P.,

Appellant.

Opinion filed December 7, 1966

PER CURIAM.

It appears from the Appellee's brief that on May 6, 1966 the juvenile Appellant, T.W.P., was released from the Florida School for Boys at Okeechobee. In the oral argument before us Appellant's counsel did not dispute the fact Appellant had been released. This being so, no useful purpose would be served to adjudicate the merits of the appeal since a hearing de novo in the juvenile court, if granted, would not afford Appellant any greater relief than he enjoys under his release.

Furthermore, the juvenile proceedings herein are not criminal proceedings and no stigma attached to the Appellant growing out of such proceedings which would justify reaching back of the release and vitiating the adjudication in the juvenile court.

The appeal is dismissed.

EXCERPTS FROM FLORIDA JUVENILE COURT ACT

39.01 Definitions.—When used in this chapter:

(11) "Delinquent child" means a child who commits a violation of law, regardless of where the violation occurred; or is incorrigible; or is a persistent truant from school; or who is beyond the control of the child's parent or other legal custodian; or who associates with criminals, reputed criminals, or vicious or immoral persons; or is growing up in idleness or crime; or whose occupation, behavior, or associations are such as to injure or endanger the welfare of the child or the welfare of others; or who is found in a place predominantly used for selling intoxicating drinks for consumption on the premises.

39.02 Jurisdiction.—

(1)(a) The juvenile court shall have exclusive original jurisdiction of dependent and delinquent children domiciled, living or found within the county or district in which the court is established. The juvenile court of the county or district in which the child is found shall assume jurisdiction of the child, which jurisdiction shall be exclusive unless the judge thereof, upon approval of the judge of the juvenile court of the county or district in which is located the domicile or usual residence of the child, shall transfer the case and child to the latter court, before or after hearing, in which event the latter court shall thereafter exercise exclusive jurisdiction; provided, however, if the judge shall find that any child brought into juvenile court who, if an adult, would be charged

with violating a federal law, state law or city ordinance relating to the operation or use of a motor vehicle, the judge may enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult.

(5) When jurisdiction of any child shall have been obtained, the court shall retain jurisdiction, unless relinquished by order, until the child reaches twenty-one years of age; provided, that this shall not prevent the exercise of jurisdiction of any other court having jurisdiction in case the child, after becoming an adult, commits a violation of law.

(6) If the judge deems that any child brought into juvenile court as a delinquent child, who is fourteen years of age or older, and who, if an adult, would be charged with a violation of Florida law constituting a felony, should be transferred to the court which would have jurisdiction of the child if the child were an adult, or if any child brought into juvenile court as a delinquent child, and who, if an adult, would be charged with a violation of the laws of Florida, so demands prior to or at the commencement of the hearing before the court, the judge shall enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult; provided, that a child sixteen years of age or older who, if an adult, would be charged with a capital offense, shall be so transferred; provided, further, that jurisdiction over any child trans-

ferred under the provisions hereof shall revert to and be reinvested in the juvenile court making the transfer in the event that no criminal charge is brought against such child in the court to which he is transferred by the end of the next term of said court which commences after such transfer, or in the event that a criminal charge brought within that time is nolle prosequied or dismissed, and no further charge is brought in said court within sixty days thereafter; providing further, that any child, irrespective of age, who, if an adult, would be charged within a violation of Florida law punishable by death or life imprisonment and such offense is presented to the grand jury who returns an indictment against said child, then the juvenile court shall waive its jurisdiction of said child for said offense and shall transfer the child to the proper court having jurisdiction to try said offense.

39.03 Taking a child into custody; detention.—

(7) No child taken into custody who has not been adjudicated to be a dependent or delinquent child shall be detained in custody longer than two days, excluding Sundays and legal holidays, unless a special order so directing is made by the judge, finding that the release of the child would be inimical to the welfare of the child or of the public, stating the reasons for such finding. The reasons for such finding shall be reviewable by appeal or in habeas corpus proceedings.

39.06 Process and service.—

(1) Personal appearance of any person in a hearing before the juvenile court shall obviate the necessity of serving process upon that person.

(2) Upon the filing of a petition containing allegations of facts which, if true, would constitute the child therein named a dependent or delinquent child found, living or domiciled within the county or district wherein the court is established, the court shall investigate and, if those facts appear to be true, a summons reciting briefly the substance of the petition shall be issued out of the juvenile court by the judge, counselor, or an assistant counselor, to the parents and legal custodians of the child named in the petition if their names and residences are ascertainable, and if not ascertainable then to any relative of the child whose name and residence is ascertainable, directing them to appear personally before the juvenile court at a time and place stated in the summons, which time shall not be less than twenty-four hours after service of the summons, and to bring the child before the juvenile court at that time and place if the child is not in custody by order of the juvenile court.

(3) If it appears from the petition that the child named therein is in such condition or surroundings that the welfare of the child requires that the child be taken into custody upon the filing of the petition, or if the petition alleges that the child has committed a violation of law, and the judge deems it advisable to do so, the judge may, by endorsement upon the summons, order that the child shall be taken into custody immediately, and in such case the person serving the summons shall forthwith take the child into custody.

(4) Witness subpoena shall be issued to any other person who will not otherwise appear and whose presence at the hearing is deemed necessary by the judge,

counselor, or assistant counselor, or is requested by the child or the parent or legal custodian of the child.

(5) It shall not be necessary to the validity of any juvenile court proceedings concerning a child that the parents or legal custodians of the child be present, if diligent search and inquiry have been made without success by the court to ascertain their identity and residences, or if the parents and legal custodians evade service of or ignore summons, but in that event the judge, counselor, or assistant counselor who made the search and injury shall file in the case a certificate as to those facts, and the judge may appoint a guardian ad litem for the child. This subsection shall not modify the provisions of subsection (4) of §39.11.

(6) The jurisdiction of the juvenile court shall attach to the child and case when the summons is served upon a parent or legal custodian of the child, or when the child is taken into custody with or without service of summons and before or after filing of a petition, whichever first occurs, and thereafter the juvenile court may control the child and case in accordance with this chapter.

(7) The process, summons, warrant, and orders of the juvenile court shall run throughout the state, as fully and effectively as the process of the circuit court.

(8) All process, orders, commitments to an industrial school, and other papers issued out of the juvenile court or by the judge thereof in the capacity of committing magistrate may be served or executed, as the judge may direct, by the counselor or an assistant coun-

selor of that juvenile court, or in the same manner as process issued out of a circuit court.

(9) No fee shall be paid for service of any process, orders, or other papers by a counselor or assistant counselor, but any expense incurred therein shall be paid out of the juvenile court fund, except expense incident to transportation of children to an industrial school, which expense shall be paid out of the fine and forfeiture fund of the county wherein the child was found. If any process, orders, or other papers are served or executed by any sheriff or constable, the sheriff or constable shall be compensated in accordance with law out of the funds of the county set aside for that purpose, and not out of the juvenile court fund.

39.07 No answer required.—No answer to the petition, nor any other pleading, need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose.

39.09 Hearing.—

(1) The hearing shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation or procuring counsel upon request of the child or a parent or legal custodian of the child shall whenever practicable be granted.

(2) Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases in the circuit courts, and adjourning the

hearings from time to time as necessary. All such hearings, except as hereinafter provided, shall be open to the public and no person shall be excluded therefrom except on special order of the judge, who, in his discretion may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. In any event, all hearings involving unwed mothers, custody or placement of illegitimate children shall remain confidential and closed to the public as heretofore. Hearings in such cases involving more than one child may be held simultaneously where the several children involved are related to each other or were involved in the same transactions. The child and the parents or legal custodians of the child may be examined separately and apart from each other. This subsection shall not be applicable to hearings before the judge as committing magistrate.

39.10 Adjudication.—

(1) If the judge shall find that the child named in a petition is not a dependent or delinquent child, the judge shall enter an order so finding and dismissing the case.

(2) If the judge shall find that the child named in a petition is a dependent or delinquent child, the judge shall incorporate that finding in an order entered in the case, briefly stating the facts upon which the finding is made, and the juvenile court shall thereafter have full jurisdiction to deal with the child as a dependent or delinquent child.

(3) An adjudication by a juvenile court that a child

is a dependent or delinquent child shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, nor to disqualify or prejudice the child in any civil service application or appointment.

39.11 Powers with reference to dependent or delinquent children.—

(3) Any commitment made to an industrial school shall be for an indeterminate period of time, any child so committed to be released when directed by the board of commissioners of state institutions rather than upon the order of the juvenile court committing the child, but no child shall be held in an industrial school under a commitment from a juvenile court after becoming twenty-one years of age. The juvenile court, in committing a child, shall not lose jurisdiction, but shall discontinue exercising active control over the child while the child is committed to the school. The board of commissioners of state institutions shall notify the juvenile court which committed the child to the school, at least thirty days before releasing the child, and the juvenile court may thereupon resume control and thereafter make orders for the supervision of the child as may be proper.

39.12 Seal; records; privileged information.—

(3) Juvenile court records except records of traffic violations, shall not be open to inspection by the public. All records, except those for traffic violations, shall be

inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child. The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the judge may deem proper, and may punish by contempt proceedings any violation of those conditions.

Criminal Court of Record

PROBATION DEPARTMENT

Dade County Miami, Florida

December 27, 1966

PHILIP N. WARE
Chief Probation Officer
Room 431
Metropolitan Justice Building
1351 N.W. 12th Street
Miami, Florida 33125
371-7161

Alfred Feinberg
Attorney at Law
223 S. E. 1st Street
Miami, Florida

Dear Mr. Feinberg:

Pursuant to your recent telephone request, please be advised that any information this office might receive from the Dade County Juvenile and Domestic Relations Court concerning former juvenile delinquency of persons awaiting sentencing in the Dade County Criminal Court of Record is that which the Judges of the Juvenile Court deem proper for presentence investigation use. I understand that the Juvenile Court Judges release this information of their former dispositions and adjudications in accordance with Chapter 39.12 (3), Flroida Statutes.

I might add that such information is used by this office in conjunction with that obtained from school records, law enforcement agencies, municipal courts, and personal

interviews with the defendant, his relatives, neighbors, friends, and employers to provide as complete a background summary as possible for the confidential use of the Criminal Court Judges.

I trust this explanation will clarify this matter.

Very truly yours,

Philip N. Ware
Chief Probation Officer

PNW:sh